

INSTRUCTION NO. [10-201]

[Actual Physical Control]

A person is in actual physical control of a motor vehicle if the person is not a passenger, and is in a position to, and has the ability to, operate the vehicle in question. [A motorist does not relinquish control over a vehicle simply because it is incapable of (starting) (moving).

GIVEN: _____
District Judge

Source: MCJI 10-201

Plaintiff's Proposed Instruct. No. ____ Defendant's Proposed Instruct. No. ____

Given as Instruction No. ____ Refused ____ Withdrawn ____ By ____

[Actual Physical Control, Source and Comments]

SOURCE: *State v. Robison* 931 P.2d 706 (Mont. 1997); *Turner v. State*, 705 P.2d 982 (Mont. 1990); *Gebhardt v. State*, 775 P.2d 1261 (Mont. 1989).

COMMENT: Cite as MCJI 10-201.

The final, bracketed, sentence of this instruction is for use in those situations where, for example, a vehicle has become stuck (*Gebhardt v. State*, 775 P.2d 1261 (Mont. 1989)) or the vehicle will not start but is being manually directed (*Turner v. State*, 705 P.2d 982 (Mont. 1990)). In those circumstances use the final sentence with the appropriate language.